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3738

Attorney Docket no: PHO-105

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Dees et al.

Serial No.: 09/130,041

Filed: August 6, 1998

For: Improved Method For Targeted Topical Treatment
Of Disease

Examiner: Thomas C. Barrett

Art Unit: 3738

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Shannon Wallace

Name of applicant, assignee, or Registered Rep.

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Signature

Date

January 3, 2005

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ELECTION

Sir:

In response to the species Restriction Requirement of December 15, 2004, Applicants elect
the following species:

species I (single-photon excitation),

subspecies II (agent is directly applied),

sub-subspecies II (indicator agent is the PDT agent),

sub-sub-subspecies II (illumination by balloon catheter),

sub-sub-sub-subspecies II (the balloon is compliant).

Applicants wish to note on the record that they do not believe that sub-sub-sub-subspecies I (non-compliant balloon) and sub-sub-sub-subspecies II (compliant balloon) are patentably distinct from one another.

Applicants note that the Examiner does not appear to have considered Amendment A (filed September 6, 2000 and received by the PTO on September 11, 2000). In that Amendment, non-elected Claims 40-64 and 67 were canceled and Claims 68-87 added. Accordingly, Applicants believe that the following claims read on the elected species: Claims 1-28, 31-33, 35-39, 65-66, 68-69 and 71-86.

Applicants are making this election without prejudice to filing a divisional application on the non-elected claims and/or species at a later date.

Respectfully submitted,



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